



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 22, 2022

IN THE MATTER OF:

Appeal Board No. 622531

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 622529 and 622530, the claimant appeals from the decisions of the Administrative Law Judge filed March 14, 2022, insofar as the decisions modified the initial determinations, holding the claimant ineligible to receive benefits, effective November 12, 2020, on the basis that the claimant was not available for employment, to be effective November 12, 2020, through March 3, 2022, and as so modified, sustained the initial determination; charging the claimant with an overpayment of \$5,544.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant

with an overpayment of Federal Pandemic Unemployment Compensation of \$8,100.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$8,064.00 recoverable pursuant to § 2107 (e)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020.

In Appeal Board 622531, the claimant appeals from the decision of the Administrative Law Judge filed March 14, 2022, insofar as the decision disqualified the claimant from receiving benefits, effective March 3, 2021, on the basis that the claimant voluntarily separated from employment without good cause.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony

was taken. There were appearances on behalf of the claimant and the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant filed a claim for unemployment insurance benefits on May 22, 2020, and her claim was made effective as of May 4, 2020. She received and read portions of the unemployment insurance handbook, including the portions regarding the need to be ready, willing, and able to work.

The claimant worked as a full-time medical assistant for a hospital from March 9, 2020, through November 11, 2020. She worked Monday through Friday, from 8:00 am to 4:30 pm. On November 12, 2020, the claimant delivered her first child and began a paid medical leave from work. She was scheduled to resume her employment on March 3, 2021.

On February 15, 2021, the claimant emailed the employer to indicate that she did not intend to resume her work as of March 3, 2021. The claimant had no family to assist with childcare, and her husband works alternating shifts. The claimant had concerns about her child contracting Covid at daycare, and her own exposure at the office. When the claimant's medical leave ended, the claimant did not resume her employment.

The claimant has checked online for daycare. As of August 29, 2021, the claimant had not placed her child in daycare because of financial reasons.

Notwithstanding, from April 3, 2021, through August 29, 2021, the claimant certified weekly that she was ready, willing, and able to work. She received the unemployment insurance benefits in question.

OPINION: The credible evidence establishes that the claimant has been unavailable for employment since November 12, 2020, when she delivered her first child. Although the claimant alleges that she was ready, willing, and able to work, we note that the employer granted the claimant a paid medical leave from her employment through March 3, 2021. As a result, we find that the claimant was unavailable for employment because she was on approved leave through March 3, 2021. (See Appeal Board No. 541058) We further note that after the separation of March 3, 2021, the claimant did not secure childcare for personal reasons. Her restrictions on her employment, that the employment be remote and/or part-time, when she had no history of either, restricted her

reasonable prospects of obtaining employment. (See Appeal Board No. 548487) Additionally, her self-imposed restrictions rendered her unable to afford daycare such that she would be able to return to the full-time, in-person employment for which she had experience and training. We therefore conclude that the claimant was not ready, willing, or able to work and was ineligible for benefits, effective November 12, 2020, through March 3, 2022, the date of the hearing.

The claimant received the unemployment insurance benefits at issue for the period from November 12, 2020, through March 3, 2022. As the claimant was ineligible for benefits due to her unavailability, the benefits which she received were overpaid. Her certifications, that she was ready, willing, and able to work, when she was unwilling to accept full-time, in-person employment, were factually false and render the overpayment of regular benefits recoverable. As the claimant was ineligible for benefits from November 12, 2020, through March 3, 2022, due to her being unavailable, we further find that the federal benefits that she received are repayable pursuant to law.

Our review of the record, however, reveals that the case should be remanded to hold a further hearing concerning the initial determination of voluntary separation. The Judge, without modifying the original basis in accordance with Board Rule 12 NYCRR § 461.4 (d), based her decision upon facts and

circumstances other than those specified in the initial determination. The parties are hereby notified that the Board will consider both that the claimant left her employment because of her lack of childcare and preference to remain with her child, as well as that a medical condition, related to the birth of her child, prevented her from returning to work on March 3, 2021.

At the further hearing, the Judge will take additional testimony from the claimant regarding the actual reason for her separation from employment, effective March 3, 2021. The claimant will provide medical evidence to establish that a medical condition prevented her from returning to work as of March 3, 2021. Any documentary evidence in support of such testimony, including but not limited to a doctor's medical release allowing her to resume employment, shall be produced at hearing and properly entered into the record.

DECISION: In Appeal Board No. 622529 and 622530, the decisions of the Administrative Law Judge, insofar as appealed from, are modified and as so

modified, are affirmed.

In Appeal Board No. 622529, the initial determination, holding the claimant ineligible to receive benefits, effective November 12, 2020, on the basis that the claimant was not available for employment, is modified to be effective November 12, 2020, through March 3, 2022, and as so modified, is sustained.

In Appeal Board No. 622530, the initial determinations, charging the claimant with an overpayment of \$5,544.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an overpayment of Federal Pandemic

Unemployment Compensation of \$8,100.00 recoverable pursuant to § 2104 (f)(2)

of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$8,064.00 recoverable pursuant to § 2107 (e)(2) of the

Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, are sustained.

The claimant is denied benefits with respect to the issues decided in Appeal Board Nos. 622529 and 622530.

In Appeal Board No. 622531, the decision of the Administrative Law Judge, insofar as appealed from, is rescinded.

Now, based on the foregoing, it is

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of voluntary separation, only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the Notice of Hearing shall identify as the Purpose of Hearing the remanded issue of voluntary separation, only; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the remanded issue only, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER